

he Department looks to Section 270.115 as guidance in determining the situs of the retail purposes. See 86 Ill. Adm. Code 270.115. (This is a GIL).

Dear

This letter is in response to your letter dated September 19, 2000. We apologize for the delay that we respond with a General Information Letter, which is designed to provide general information, 1200.120 which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am requesting a formal legal ruling for a client with an e-commerce question of whether to charge their customers sales **or** use tax. Our client has retail stores in your state. They also have an Internet business located in STATE. When products are not available in the retail stores, customers can order products from the Internet business via an Internet terminal located in any of the retail stores in your state. The retail stores and Internet business are in the same legal entity. Our client has no desire to avoid collecting sales or use tax, but is unsure which tax (the sales tax or the use tax) is appropriate.

Facts

1. All Internet sales are shipped FOB STATE or from foreign manufacturing locations directly to the customers' home. They are shipped via Federal Express or some other common carrier.
2. Title and risk of loss pass to the customer at the time of shipment.
3. All Internet sales orders are processed electronically with credit cards. The orders are approved in STATE1 or STATE **or** electronically via an online service.
4. Sales orders are recorded in STATE1 or STATE.
5. The Internet server is located in STATE.

Hypothetical:

John Doe walks into XYZ's store in CITY, Illinois to purchase a camera. The camera is not in store inventory. The store clerk recommends that John Doe use the Internet terminal in the store and order the product himself. So, John inputs his name, address, and credit card information into the computer terminal. The order is approved immediately by XYZ's Internet business in STATE. The camera will be shipped via Federal Express or a similar common carrier directly to John's home in CITY, Illinois from XYZ's inventory in STATE.

Issue

Should XYZ charge John sales tax at the CITY, Illinois sales tax rate or at the Illinois use tax rate?

Authority

Illinois Administrative Code Section 270.115 explains the manner in which one determines if a local tax, and which local tax, is applicable to a transaction. As the regulation explains, local taxes are incurred if the sales occur in a jurisdiction with local tax. The Department has determined that the seller's acceptance of the purchase order is the most important element of selling. Therefore, if the purchase order is accepted in a jurisdiction that imposes a local tax, the local tax will be assessed.

It appears there are no previously issued letter rulings with the precise fact pattern as presented here. However, several letter rulings on this matter involved taxpayers with similar order acceptance questions.

In PLR 90-0857, the Department states that 'the point at which the property will be used or consumed and the place at which the purchaser resides are immaterial.' The Department determined that 'the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling.'

Conclusion

The facts indicate that the order acceptance of the internet sales takes place outside of Illinois. We believe the use tax applies under the above fact scenario.

Please call me if you have any questions or if you need additional information.

As you have noted in your letter, the Department looks to Section 270.115 as guidance in determining the situs of the retail sale for Retailers' Occupation Tax and Home Rule Municipal Retailers' Occupation Tax purposes. See the enclosed copy of 86 Ill. Adm. Code 270.115. The Department has determined that the seller's acceptance of the purchase order (or other contracting

action which is an acceptance of the seller's complete and unconditional offer to sell) in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted outside of this State, the Department generally considers that sale to have taken place outside of this State.

If an individual makes a purchase through the use of the Internet and the purchase order acceptance occurs outside of this State, we consider that sale to have taken place outside of this State. This analysis is not affected regardless of where the customer is located when the customer places the Internet order.

Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See the enclosed copy of 86 Ill. Adm. Code 150.101. Illinois customers incur Use Tax liability on their out-of-State purchases of tangible personal property for use or consumption. If the retailer making the out-of-State sales is considered a "retailer maintaining a place of business in Illinois" as that term is defined in subsection (i) of the enclosed copy of 86 Ill. Adm. Code 150.201, then that retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability on those out-of-State sales. The Use Tax rate on general merchandise for those out-of-State sales is 6.25%.

Based upon the information in your letter that the retailer has stores located in this State and the Internet business is part of the same legal entity, the retailer has sufficient nexus with this State to be required to collect Illinois Use Tax on its Internet sales to Illinois customers. In the scenario set out in your letter, you are correct that Illinois Use Tax would have to be collected by the retailer rather than both the Illinois Retailers' Occupation Tax and any applicable local retailer occupation taxes.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.